



C.M.A(MD)No.1470 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 15.07.2022

Pronounced on : 26.07.2022

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THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1470 of 2011

The Branch Manager,
M/s. United India Insurance Co.Ltd.,
Palani

... Appellant

Vs

1.Neelaveni
2.Rajagopal
3.Rengarajan
4.Vijayalakshmi

... Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 14.06.2011 made in M.C.O.P.No.69 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Palani.

For Appellants : Mr.B.Rajesh Saravanan

For R1 to R3 : Mr.S.Karthick

For R4 : No appearance



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JUDGMENT

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This appeal is filed against the order made in M.C.O.P.No.69 of 2007, on the file of the Motor Accident Claims Tribunal (Subordinate Court), Palani. The appellant herein is the second respondent. The respondents 1 to 3 are claimants. The fourth respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 05.02.2006 at about 9.30 pm, when the deceased Lakshmanasamy was standing near the left side of the road, in front of the Vinayagar temple at Neikkarapatti Bazaar street, a lorry bearing registration number TN U 1200 was taken in a reverse mode by the driver, in a rash and negligent manner, hit against the deceased. He was admitted in the Government Hospital, Palani, later he died of the injuries. The claimants are the dependants and they claimed a sum of Rs.4,00,000/- as compensation.

3.Brief substance of the counter is as follows:

The mode of accident, age of the deceased, income and avocation of the deceased are denied. The lorry driver was not rash or negligent. It was the



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deceased who suddenly crossed the road without observing the upcoming lorry and he invited the accident. The lorry driver was not having valid driving license. The policy conditions are also violated. The respondent is not liable to pay any compensation.

4.Two witnesses were examined. six(6) documents were marked on the side of the petitioner. Two witnesses were examined and two documents were marked on the side of the respondent. The Tribunal awarded a sum of Rs.2,09,000/- as compensation.

5.Against the award, the appellant preferred the appeal on the following grounds:

The Tribunal failed to consider that the driving license of the lorry driver was already expired on the date of accident. He did not possess a valid driving licence which amounts to violation of policy conditions. There is, no fitness certificate for the lorry. The Tribunal failed to give a finding regarding the violation of policy condition. Applying multiplier 8 is wrong. The deceased was not an earning member. Claimants 2 and 3 are not the dependants. The owner of the vehicle remained ex-parte before the Tribunal.



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6.On the side of the appellant it is stated that the date of accident is 05.02.2006. But the driving license of the lorry driver expired on 21.03.2005 itself. R.W.1 has deposed that the driving license of the lorry driver expired on 21.05.2003 and the driving licence was not renewed subsequently and prayed for an order of pay and recovery.

7.On the side of the respondent it is stated that the award of the Tribunal is very meagre. Both the owner and the insurance company are to pay compensation and the application of multiplier 8 is correct and pray the appeal to be dismissed.

8.Records perused. From the evidence of R.W.1, it is clear that the lorry driver was not having valid driving licence at the time of accident. The license expired on 21.03.2005. It was not subsequently renewed and the accident took place on 05.02.2006. The lorry was driven by a person who was not having a valid driving licence, there is a policy violation. Hence, the appellant herein is directed to pay the award amount to the claimants and then the to recover the same from the owner of the vehicle. The compensation



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awarded by the Tribunal is reasonable. There is no cross objection on the side of the claimants. Multiplier applied by the Tribunal is correct. No interference is required regarding the quantum of compensation.

9.The Civil Miscellaneous Appeal is allowed. No costs.

(i) The appellant is directed to deposit the award amount with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and with cost within a period of eight weeks and to recover the same from the owner of the lorry bearing registration number TN U 1200.

(ii) On such deposit being made by the Appellant insurance company, the major claimants are permitted to withdraw their share in the award amount, along with proportionate interest as apportioned by the Tribunal, less any amount already received. The respondents are not entitled for interest for the default period, if there is any.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal (Subordinate Court), Palani.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

**Pre - Delivery Judgment made in
C.M.A(MD)No.1470 of 2011**

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